United States District Court
Southern District of Texas

THE ALTERNATIVE DISPUTE RESOLUTION PROGRAM

October 16, 1998

THE ALTERNATIVE DISPUTE RESOLUTION PROGRAM

As a result of the Civil Justice Reform Act of 1990, this district has had a formal Alternative Dispute Resolution (ADR) program since January 1992. Local Rule 20 sets out the requirements for this program. These requirements include the maintenance of a list of ADR providers who meet certain standards and the gathering of information on ADR proceedings. ADR has become an important case management tool for many of the judges of this district since the adoption of Local Rule 20.

THE ADR PROVIDER LIST

As of September 30, 1998, there were 216 ADR providers on the Court's standing list maintained in accordance with Local Rule 20.E. The number of ADR providers on this list has declined somewhat: in 1993, there were 234 providers on the list. In 1998, 57 ADR providers either renewed their listing or were added to the list, while 80 either renewed or were added in 1997. Providers have left the list in several ways: at their request, by failing to meet the continuing education requirements of Local Rule 20.E.3, by failing to apply for relisting after five years in accordance with Local Rule 20.E.4, or through death.

This list serves two functions for the Court. First, it provides a pool of qualified ADR providers from which the Court or parties may select, although Local Rule 20.E.5 allows the parties or Court to select unlisted providers. Second, it provides a list of ADR providers who have agreed to accept ADR appointment *pro bono*. As of September 30, 1998, 34 ADR providers had received *pro bono* appointments.

ADR REFERRALS

Local Rule 20.A requires early discussion of the appropriateness of ADR, and a report on those discussions to the Court at the initial pretrial conference. Many judges' procedures reiterate this requirement through scheduling orders and joint case management plans. Judges report that ADR is taking place quite early in many cases, without intervention on the record by the presiding judge. There is no reliable data on ADR that occurs without a court order. In many cases, the only correspondence that the Court will receive on such a case will be an indication that the case has settled, with no indication of the role that ADR played in that result, if any. Only written orders of referral can be reliably counted and described.

Since 1991, orders for ADR have been entered an average of 346 days after filing of the case. The referral orders since January 1997 have been entered an average of 257 days after filing, suggesting that serious consideration of ADR is now taking place earlier in civil cases as the process gains acceptance. Since many of the Court's orders referring cases to ADR are issued after an agreed motion by the parties, it is possible that litigants are more comfortable proceeding to ADR when the Court is actively involved in the case, or seek the order for added protection on confidentiality and privilege issues.

From January 1, 1991 through September 30, 1998, 2583 cases were referred to ADR by order. Figure 1, below, shows the numbers of court ordered referrals annually, with a projected number through the end of the year for 1998. The steady increase in referrals indicates strong support for the use of ADR as a case management tool among the judges of this Court. The

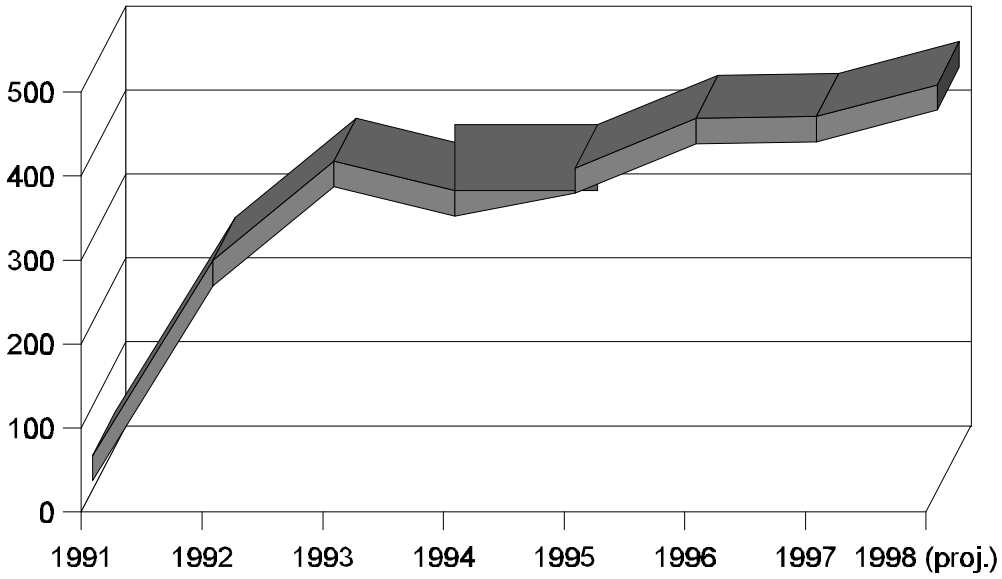

Figure 2 Annual Orders Referring Cases to ADR

following table shows the distribution of case references among the divisional offices of the district.

Division	January 1, 1991 through September 30, 1998 Total Orders Referring Cases	January 1 1997 through September 30, 1998	
		Total Orders Referring Cases	As Percentage of New Civil Filings
Brownsville	44	12	2.87%
Corpus Christi	100	37	3.35%
Galveston	677	377	30.73%
Houston	1464	263	3.49%
Laredo	101	30	12.55%
McAllen	188	56	11.05%
Victoria	9	4	1.88%
All Divisions	2583	779	7.07%

Of the cases referred to ADR, nearly all were ordered to mediation. Local Rule 20.D states "The Court recognizes these ADR methods: mediation, minitrial, summary jury trial, and arbitration. The Court may approve any other ADR method the parties suggest or the Court believes is suited to the litigation." Since the inception of the program, only 12 cases have been referred to ADR methods other than mediation. One case was referred to Summary Jury Trial and eleven were referred to non-binding Arbitration. The other 2544 cases in which orders for ADR have been entered since January 1, 1992 were ordered to mediation. Because the number of ADR proceedings other than mediation was so small, the following analysis should be regarded as discussing mediation.

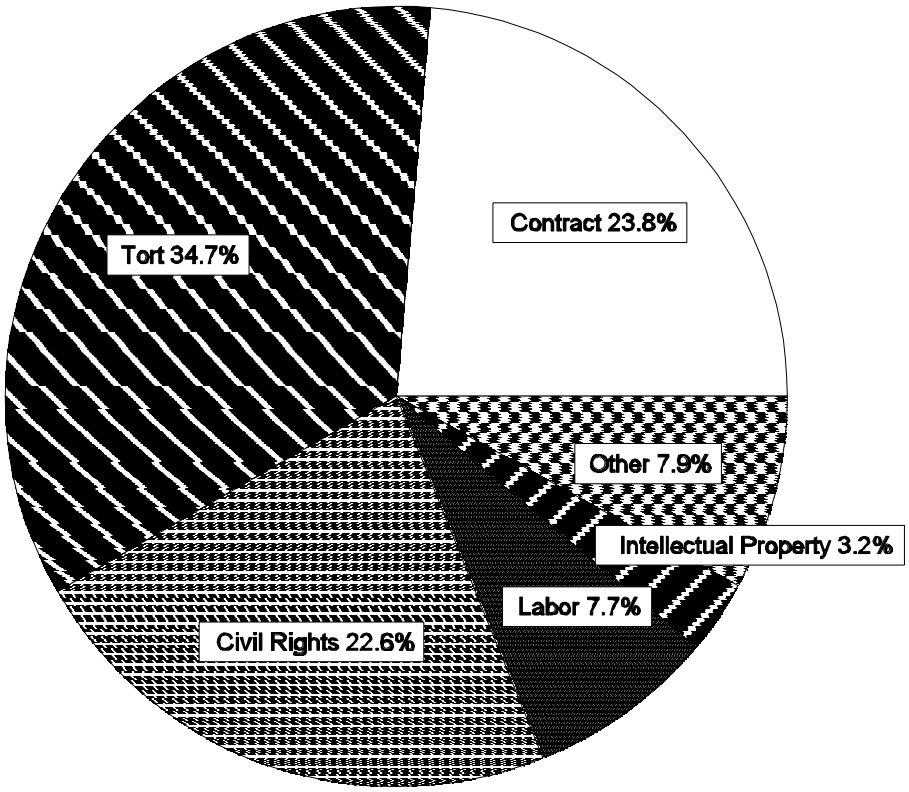

Figure 3 Types of Suit with ADR Referrals Since 1991

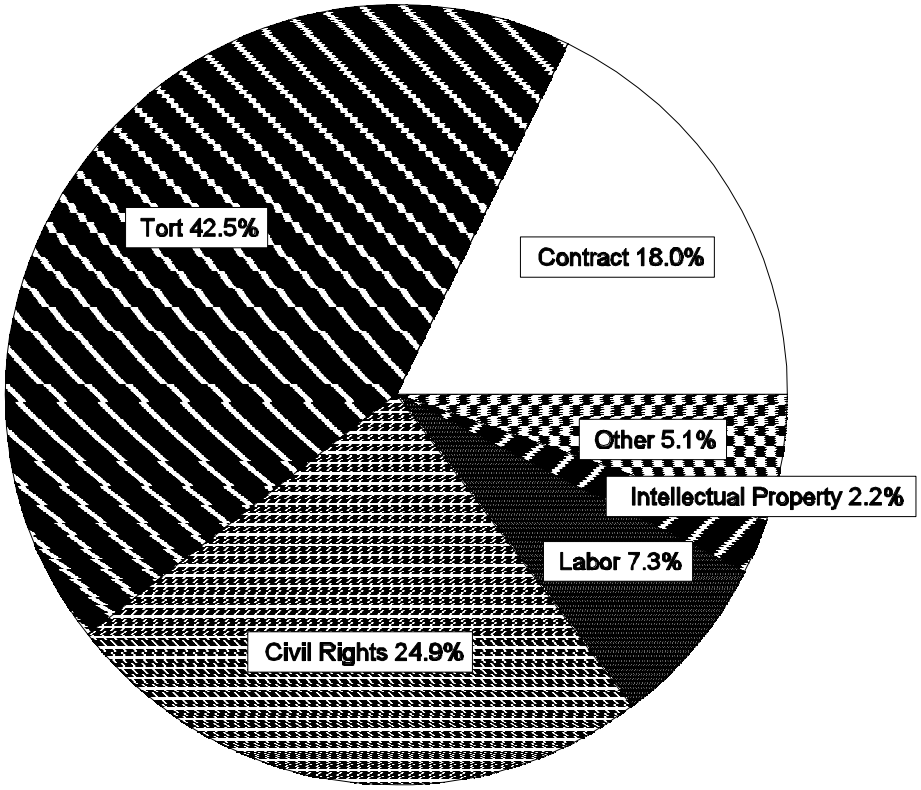

Figure 4 Types of Suit with ADR Referrals, January 1997 through September 1998

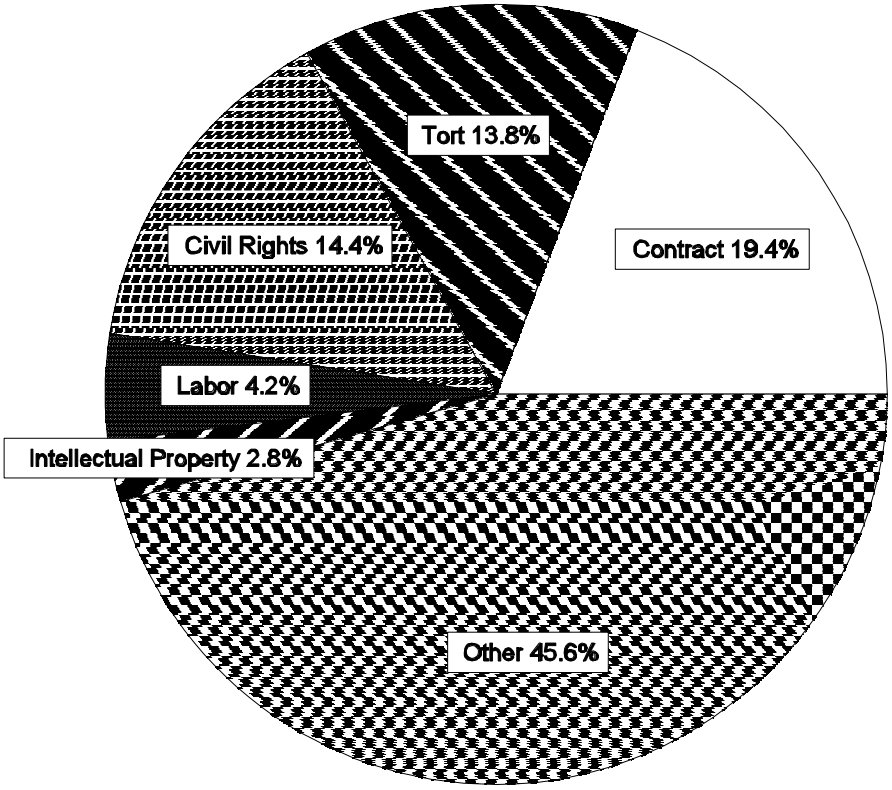

Figure 5 Types of Suit of All New Civil Filings, January 1997 through September 1998

Figures 2 and 3, above, show the types of cases referred to ADR by the Court for the lifetime of the ADR program and since January 1997, respectively. For comparison, Figure 4 shows the types of new filings received from January 1997 through September 1998. Certain types of cases, such as prisoner petitions, forfeiture actions and bankruptcy litigation are only rarely referred to ADR. Tort, contract and civil rights cases were the three kinds of cases most often referred, suggesting that these cases are thought of as most likely to benefit from ADR. In fact, tort cases made up a disproportionately large percentage of all referred cases in comparison to their fraction of all cases filed, exceeding all other types of suit in total referrals.

Appendix A lists ADR providers who have been assigned to cases as mediators. It provides a good indication of the popularity of some ADR providers with the Court and litigants.

RESULTS OF ADR

It is difficult to draw accurate conclusions about the benefits of ADR in civil cases. However, Local Rule 20 provides some elementary tools for that purpose. Within 10 days after completion of each mediation or ADR procedure, Local Rule 20.K.1 requires that the ADR provider "send the court clerk a memorandum stating the style and civil action number of the case; the names, addresses, and telephone numbers of counsel and the parties; the type of the case; the method of the ADR proceeding; the success or failure of the ADR proceeding, and the provider's fees." In addition, 20.K.2 states that "The clerk of court will submit a questionnaire to the parties and will require counsel and their clients to complete and return the questionnaire for reference by the Court, attorneys, and public." These memoranda and questionnaires offer some

insight into the role that ADR plays in cases.

Memoranda from ADR providers indicate that 56.5% of cases that underwent the ADR process settled, while 43.5% did not. The table on the following page shows results of ADR as indicated by returned questionnaires from attorneys and their clients. The proportion of cases indicated as having "Settled at ADR Proceeding" approximately matches the settlement rate indicated by the ADR providers. The 13% of cases that "Settled after ADR proceeding as a result of ADR proceeding" suggest that ADR has a positive impact on future settlement possibilities in many cases. The fact that so few responses indicated that their cases settled without the influence of ADR suggests that cases selected for ADR have qualities that make them difficult to settle without outside influence. Since the vast majority of civil cases settle before trial, it is difficult to conclude that a 69% settlement rate is a substantial benefit. However, it may be that those cases that undergo ADR are less likely to settle without ADR than most civil cases, perhaps implying that ADR is of substantial benefit in certain cases.

Result Indicated on Attorney or Client Questionnaire	Number of Responses	Percent of All Responses
Did not settle	1184	27.53%
Settled after ADR proceeding as a result of ADR proceeding	578	13.44%
Settled after referral but before ADR proceeding	31	0.72%
Settled after, but not as a result of, ADR proceeding	139	3.23%
Settled at ADR proceeding	2368	55.07%

The questionnaires returned by attorneys and their clients offer the most potential insight into the efficacy of ADR. Litigants were asked whether they considered the ADR proceeding helpful in understanding the issues in their cases. 77.6% of the respondents said that the proceeding was helpful, with 22.4% stating that the proceeding was not helpful. There was no significant variance among responses to this question by attorneys and clients, whether they were plaintiffs, defendants and other parties.

An additional indicator of the effectiveness of the ADR program is the respondents evaluation of the ADR providers. Questionnaires asked respondents to indicate whether they considered the provider's services Excellent, Satisfactory or Unsatisfactory. Appendix B contains a complete breakdown of these evaluations, with a list of all those cases and providers in which an evaluation of Unsatisfactory was given. Only 3.5% of all respondents indicated that they considered their providers Unsatisfactory. 64.4% gave a rating of Excellent. Attorneys, especially those representing plaintiffs, were more likely to give ratings of Excellent than were their clients (Excellent ratings of 68.3% of attorneys compared to 57.9% of clients, and 70.7% of attorneys for plaintiffs), and slightly less likely to give ratings of Unsatisfactory. Overall, however, satisfaction with the ADR process appears to be high. Notably, of the 146 Unsatisfactory ratings given, 86 were given in cases that the respondents indicated did not settle.

One other query on the questionnaire is of interest when evaluating the ADR program. Attorneys and their clients were asked how many hours the ADR proceedings consumed. Those respondents who answered this question reported an average time of 8.4 hours, or about one full working day. Notably, the 189 respondents representing parties other than plaintiffs or defen-

dants reported an average of 9.2 hours for their ADR proceedings, perhaps indicating that the issues involved in cases with additional parties take longer to resolve. The longest time reported for an ADR proceeding was 100 hours in a civil rights case.

CONCLUSION

The ADR program in this district was studied by the Rand Corporation as part of an assessment of the effects of the Civil Justice Reform Act. That report, completed in 1996, concluded that while "the program is perceived to be a positive one by lawyers and mediators," (p. 187) there was "no strong statistical evidence that time to disposition, litigation costs, or attorney views of fairness or satisfaction with case management were significantly affected, either positively or negatively" (p. 4) in any district court with an ADR program. The internal data available to the Clerk's office in this district lead to similarly tentative conclusions. While litigants generally seem to approve of the ADR program and find it helpful, it is difficult to prove that the program substantially improves the administration of justice. It is clear, however, that the Court considers ADR an important case management tool. That, coupled with the positive response from litigants suggests that the ADR program in this district is a successful one.